IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 9181 OF 2005

THE PRESIDENT/SECRETARY, GHATKOPAR
SHIKSHAN PRASARAK MANDAL & ANR. ..PETITIONERS

Versus

THE PRESIDING OFFICER,
SCHOOL TRIBUNAL & ORS. ..RESPONDENTS

Mr. V. S.Jagdale for petitioners

Mr. R.M. Patne, AGP State

CORAM:-DR. D.Y.CHANDRACHUD, J.

DATED:-7/7/2006

P.C.

. The grievance in the present petition relates to the payment of the arrears of salary in respect of a teacher by the name of Mrs. Ranjana Babanrao Unde. The aforesaid teacher moved the School Tribunal against the termination of her services claiming that she had worked in a clear and permanent vacant post of Assistant Teacher from 1st February, 1997 until the end of academic year 2001-02. The Tribunal allowed the appeal and

issued the following directions;

"(1) Appeal is allowed.

(2) The termination order dated 30-3-2002 issued by respondent No. 2 is hereby quashed and set aside.

(3) Respondents No. 1 and 2 are directed to reinstate the appellant in the original post of Asstt. Teacher with continuity of service and full backwages w.e.f. 30/4/2002.

(4) Respondent No. 1 and 2 to bear the cost of the appeal.

(5) Respondents No.1 and 2 are directed to comply with the order within 30 days from the date of receipt of order.

(6) In case the appellant is rendered surplus on account of reinstatement of Shri Subhash Patil as per order of Tribunal in appeal NO. 81/1997 Respondent No. 3 to absorb her as provided under Rule 26 of Maharashtra Employees of Private School Rules, 1981."

2. The learned counsel for the petitioners states that the order of the Tribunal was challenged by the management but the writ petition was withdrawn. The order has, therefore, attained finality.

3. This petition has been instituted for a direction that the liability to pay the salary is that of the State Government.

4. Now a perusal of the order passed by the School Tribunal would show a finding in para 9 that the approval issued by the Education Inspector on 26/10/98 to the appointment of Smt. Unde was to the effect that she was appointed in the place of another teacher Shri Subhash Patil, whose services were terminated by the management in 1997. It is in these circumstances, the Tribunal directed that in the event that Smt. Unde is rendered surplus on account of the reinstatement of Shri Subhash Patil in the appeal which Shri Patil had filed before the School Tribunal, the Education Inspector shall take steps under Rule 26 of the M.E.P.S. Rules, 1981.

5. In the affidavit in reply which is filed by the Deputy Education Inspector in these proceedings, it has been stated that in accordance with the order

of the School Tribunal Smt. Unde has been reinstated and the department has granted approval accordingly. The department is paying to her the regular salary and allowances from 17th March, 2005. However it appears that the School Tribunal has on 27th April, 2004 allowed the appeal preferred by Shri Subhash Patil (Appeal No. Mum/81/1997) and directed the management to reinstate him to the post of Asstt. Teacher from the date of termination and to pay the consequential benefits. The management, the court is informed, has challenged the reinstatement order passed in favour of Shri Subhash Patil and the petition is pending.

6. In these circumstances, there is merit in the submission made on behalf of the State that the Government cannot be called upon to pay the arrears of salary twice over. Unless the order of reinstatement that has been passed in favour of Shri Subhash Patil is set aside, the Government would be duty bound to comply with the order of the Tribunal in that case. In these circumstances, the primary liability to pay the salary of Smt. Unde is that of the management.

7. It is further clarified that in the event that the petition filed by the management against the order of reinstatement passed against Shri Subhash Patil succeeds it would be open to the management to apply to the Government for release of the grant.

8. Petition is accordingly disposed of.